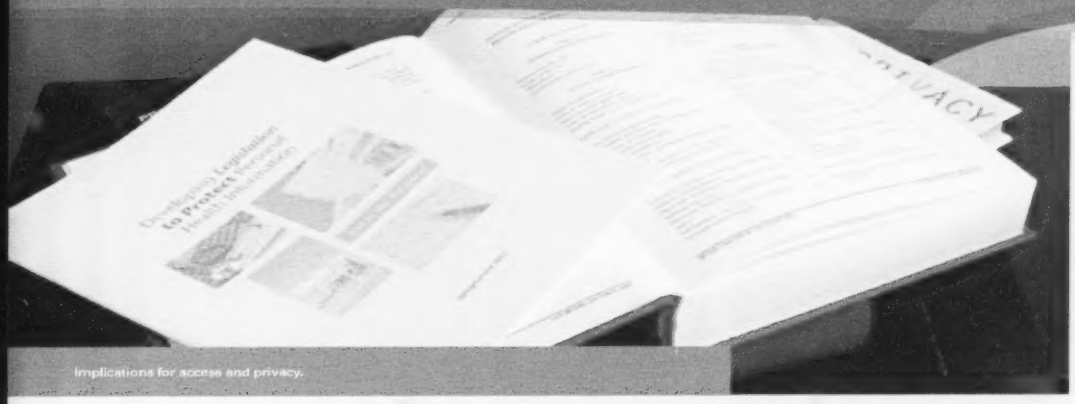
IPC Privacy matters

2012 Annual Report of the Yukon Information & Privacy Commissioner



Implications for access and privacy.

Case Summaries These stories are good examples of how our office helps Yukoners and the Yukon government with privacy and access to information issues. Names have been changed for confidentiality.

2012 Information and Privacy Commissioner's Annual Report

The Information and Privacy Commissioner (IPC) responsibility is assigned to the Ombudsman pursuant to the *Access to Information and Protection of Privacy Act (ATIPP Act)*. My appointment to these two positions on a half-time basis was effective May 1, 2012 following a five-year term served by Tracy-Anne McPhee.

My role

This Office was established by the *ATIPP Act* in 1996. Since that time it has provided independent oversight to ensure that Yukon government departments and agencies (referred to as public bodies) are accountable to the public and are respecting and protecting personal privacy.

It did not take me long to gain an appreciation for the heavy workload of the Office, due to:

- the number of active files
- the lack of targeted communications
- the steepness of the learning curve on access and privacy
- a backlog of inquiries
- the need for completed office policy and best practices manuals
- an urgent need for a more efficient file management system

No comprehensive review has been made of the Ombudsman/IPC Office since it was established 16 years ago. Its processes, practices and systems have evolved without specific attention to how the volume and nature of the work have changed. The limited resources of the Office have clearly been focused on processing and closing files.

I concluded — as my two predecessors had — that the work falling to the Ombudsman/IPC cannot be handled by the current half-time position. After a thorough discussion with my staff, I made a decision to have an organizational and operational review of the Office conducted (see sidebar article).

Some progress

In her 2011 Annual Report, the former IPC noted a lack of success in engaging the Yukon Hospital Corporation relating to a newborn screening program. I am pleased to report that the Corporation is now engaged with the Office.

A strong working relationship with Health and Social Services and the Yukon Hospital Corporation is particularly important in protecting personal health information as proposed legislation and programs are designed and implemented.

And some setbacks

In 2009, the Legislative Assembly passed amendments to the *ATIPP Act*. One change was the requirement for a review of the *ATIPP Act* every six years; another was the expansion of the scope of the Act to include additional public bodies. My predecessor's recommendation to designate municipalities, school boards, school councils and many other Yukon boards and committees as public bodies was not followed. I have been advised that the designation of public bodies criteria review, as announced in the 2009 amendment process, is being deferred until the scheduled 2015 review of the *ATIPP Act*. This delay leaves open the question of access to information and protection of privacy for the activities of government bodies not within the scope of the *ATIPP Act*.

Surprise 2012 ATIPP Act amendments

On short notice, the IPC was asked to provide comments on proposed changes to the *ATIPP Act*, expected to be tabled in the Legislative Assembly. I provided my commentary, in consultation with government officials, on the proposed amendments with some recommendations accepted and others not. My section-by-section comments on the bill can be found at **www.ombudsman.yk.ca/ipc/work_weve_done/**

I recommended that the proposed amendments would be better dealt with as part of the 2015 review of the Act when all suggested revisions could be dealt with in a comprehensive review. The Bill was passed in December 2012 as tabled and brought into force.

It is disappointing to have changes to improve the operation of the Act deferred until 2015 while government proceeds to make its desired amendments on a priority basis — amendments which I believe are compromising the spirit of access to information which underpins the Act.

What government must do

In my short tenure as the IPC I have made a number of observations:

- Yukon government must take steps to raise the level of awareness of all public servants in *ATIPP Act* access and privacy requirements, and provide ongoing support for ATIPP Coordinators.
- Yukon government must ensure that every public body receives specialized privacy training to meet the challenges ahead.
- Yukon government must place a high priority on enacting personal health information legislation.
- Public bodies must ensure that government forms used to collect personal information comply with the *ATIPP Act*.

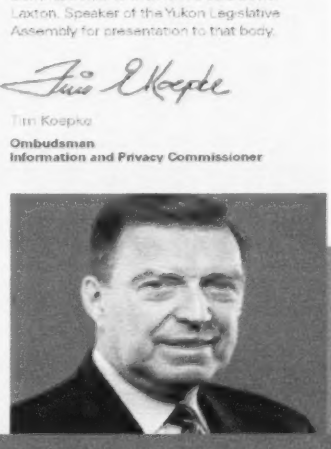
In the coming year, my office looks forward to receiving the Report on the Organizational and Operational Review and moving forward with its recommendations.

17th Annual Report

As required by the *ATIPP Act*, I am submitting this 17th Annual Report of the Yukon Information and Privacy Commissioner to the Honourable David Laxton, Speaker of the Yukon Legislative Assembly for presentation to that body.

Tim Koepke

Ombudsman
Information and Privacy Commissioner



Organizational and operational review

After a full discussion with staff and concurrence on the need for a comprehensive review of the Office's operations, I met with the Speaker and sought his support to conduct an external organizational and operational review of the Office. This review would provide an assessment of the current state and develop a roadmap for changes where required. The overall goals were to make the Office more operationally efficient, provide an improved client focus and adjust staff functions to meet the mandates under both Acts. A *Request for Proposals* was issued and a contract awarded to Imaginate Inc. to undertake the required work.

Part of the consultant's work was a questionnaire mailed to past clients of the Ombudsman and IPC Office with a request to answer eight questions rating various aspects of their experience in dealing with the Office. The questionnaires were to be completed and returned anonymously and directly to the consultant. The consultant's work included extensive personal interviews with the Ombudsman and staff, the Speaker, Deputy Ministers, representatives of Yukon government departments and former Ombudsman/IPCs. It also included a comparative review of Ombudsmen and IPC offices in other Canadian jurisdictions. The consultant will review the current file management system to see if new technology can be applied to reduce the paper burden, improve file management and provide better communications with clients and government authorities.

I expect to receive the Report around the end of January 2013 and will immediately present it to the Speaker and Members' Services Board for review, seeking support for its recommendations and devising a timely implementation plan. ■

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No disregard for justice department

Justice

If a public body asks, the IPC may authorize it to disregard a request for information under section 43 of the *ATIPP Act*.

Grounds for authorization are that the request would (a) unreasonably interfere with the operations of the public body because of the repetitious or systemic nature of the requests, or (b) are frivolous and vexatious. Justice made a request under section 43 asking for authorization to disregard two pending requests as well as any future requests made by the applicant who was incarcerated at Whitehorse Correctional Centre at the time. It also sought a blanket authorization to disregard access requests for similar information made by any inmate indefinitely into the future.

The IPC refused to grant authorization to disregard the applicant's requests concluding that Justice has not demonstrated the request met the requirements of either (a) or (b) of section 43. The IPC also concluded that section 43 did not authorize him to consider a blanket authorization to disregard future requests in the absence of an access request. For the full report go to: **www.ombudsman.yk.ca/ipc/work_weve_done/** ■

Collecting personal information

Public Bodies

Sally, the mother of a child entering school, raised her concern about the protection of her child's personal information being collected for the *Early Child Development Program of Research: Early Development Instrument* by Education. Bob, a mine supervisor, called wondering why he was being asked for his Social Insurance Number and other unnecessary personal information when enrolling online for a Yukon Mine Training Association (sponsored by Workers' Compensation Health and Safety Board) training course.

The public bodies involved in these and other privacy complaints are asked to undertake privacy investigations or assessments which invariably uncovers a lack of compliance with the *ATIPP Act*. The IPC obtains a commitment from them to make changes that will result in better protection of individuals' personal information.

Public bodies are urged to review forms used to collect personal information to ensure compliance with the *ATIPP Act*. Government forms must collect only as much personal information as relates to, and is necessary for carrying out, a program or activity. Upon collection of personal information, the individual must be notified of the purpose for the collection, the legal authority for collecting it, and contact information of someone in the public body who can answer any questions about the collection. The use of personal information must be consistent with the purpose for which it is collected. ■

Personal health information legislation urgently needed

Health and Social Services

Yukon is one of the last jurisdictions in Canada to develop personal health information legislation.

Canada Health Infoway was created to implement electronic health information systems to manage Canadians' health and health care information. Yukon is receiving its share of the several billion dollars Infoway is spending in Canada's provinces and territories. These technologies are being built with the objective of a linked, cross-Canada electronic health record system.

Infoway funds helped develop Yukon's Telehomecare and Teleradiology projects. It is also funding the development of a public health service delivery system and Yukon's electronic health record system.

Typically, the IPC relies on receiving a public body's privacy impact/compliance assessment to monitor and comment on the implications for the protection of privacy where that public body expects to collect, use or disclose personal information in a project. However, the *ATIPP Act* was not designed to accommodate the information sharing functions required of the Yukon's health care system. For all involved, it is frustrating trying to work through a health project's privacy impact/compliance assessment without having dedicated personal health information legislation.

This Office has urged the Yukon government to develop legislation that would balance individuals' rights to access and privacy of their personal health information while ensuring health care providers have the necessary personal health information to provide high quality health care.

In response to this need, HSS sought public comment in May 2012 on key issues through the consultation document, *Developing Legislation to Protect Personal Health Information*. The IPC commented on how Yukoners' personal health information should be used and protected in emerging electronic technologies that cross public and private sector boundaries. See the IPC's comments at **www.ombudsman.yk.ca/ipc/work_weve_done/**.

Yukoners' personal health information urgently needs protection through personal health information legislation.

The IPC looks forward to ongoing involvement with HSS on this important legislative initiative. ■

An exception to the exception

Yukon Energy

Yukon Energy Corporation (YEC) received an access request for a study of wind energy on Mount Sumanik.

The corporation withheld 58 pages of the 75-page study, relying on sections 16 and 17 of the *ATIPP Act*. Section 16(1) allows a public body to refuse to disclose certain information. However, section 16(2) operates like an exception to the exception listing information that a public body cannot refuse to disclose. That list includes a feasibility study. The IPC concluded the record was a "feasibility study" and that YEC could not refuse to disclose it.

YEC also relied on section 17 as disclosure of the information would harm the financial or economic interests of YEC. The IPC identified some information that related to specific geographic locations where this exception applied and recommended only that information be severed. For the full report and other 2012 inquiry reports see **www.ombudsman.yk.ca/ipc/work_weve_done/** ■

Our team, from left to right: Catherine Buckler Lyon, Tim Koepke, Colleen Gillis, Randy Reed and Susan Dennehy.

Increasing our capacity

The addition of a third Investigator/Mediator position had been approved and budgeted for earlier in the year. After a successful competition, Randy Reed joined our team in September 2012. As a former member of the RCMP, Randy brings with him strong investigative skills, complementing the work of Catherine Buckler Lyon, Senior Investigator/Mediator and Susan Dennehy, Investigator/Mediator/Legal Counsel as well as our Executive Assistant/Administrator Colleen Gillis.

Statistics

35 files were being brought forward from 2011. A total of 100 new matters were brought to our office in 2012. Of these 100 matters, 41 new analysis/investigation files were opened, resulting in 76 files for 2012. Support and assistance was provided to the other 59. 29 of these open files were closed in 2012, leaving 47 to be carried forward into 2013.

Carried Forward	
Request for review	12
Analysis/investigation	7
Comment on legislation and programs	16
Total	35

Opened 2012	
Request for review	8
Analysis/investigation	18
Section 43 request	1
Comment on legislation and programs	14
Total	41

Total working files for 2012	76
Non-jurisdictional	15
Requests for information	44
Total	59
Total new contacts for 2012	100

Files closed 2012	
Request for review	8
Investigation	12
Section 43 request	1
Comment on legislation and programs	8
Total	29

To be carried forward next year	
Request for review	12
Analysis/investigation	13
Comment on legislation and programs	22
Total	47

Budget summary

This budget summary covers the operations of the Ombudsman and IPC Office for the period April 1, 2012 to March 31, 2013. Funding pressures in that period required a $96,000 increase to the budget to cover accrued benefits and a transition employment contract for the outgoing Ombudsman/IPC, part of the contract for the Organizational and Operational Review and a revote to carry over funding for a capital purchase item from the previous year.

Category	Main	Revised	
Personnel	$497,000	$547,000	($50,000 increase)
Office and Operations	$162,000	$207,000	($45,000 increase)
Supplies and Services	$7,000	$7,000	
Capital Items	$6,000	$7,000	($1,000 revote)
TOTAL	$672,000	$768,000	($96,000+